

TENNESSEE SCHOOL LANDS.

[To accompany bill H. R. No. 87.]

MARCH 5, 1840.

Mr. CORWIN, from the Committee on the Public Lands, submitted the following

REPORT:

*The Committee on the Public Lands, to whom was referred the memorial of certain citizens of Tennessee, praying for the passage of an act to authorize them to sell certain school lands therein named, report :*

That the subject was referred to this committee during the last Congress, and a favorable report made thereon, which the committee adopt and report with a bill answering to the prayer of the petitioners.

DECEMBER 22, 1837.

*The Committee on the Public Lands, to whom was referred the subject of the school lands in Tennessee, report :*

The committee were instructed to inquire into the expediency of authorizing the State of Tennessee to sell the school lands within the limits of said State. The committee have had that subject under consideration, and also the memorial of sundry citizens of the county of Lincoln, State of Tennessee, which was referred to that committee, praying Congress to authorize the Legislature of said State to sell a certain township of school land, lying in said county, and described in the memorial. It appears to the committee, by reference to two several reports made by the Committee on the Public Lands, (the first to the 22d Congress, on the 24th of January, 1832, and the other to the 24th Congress, on the 5th of January, 1836), that there are within the limits of the State of Tennessee about 24,000 acres of school lands; that these lands were appropriated for the use of schools by a clause contained in an act of Congress of the 18th of April, 1806, which clause is in the words following, to wit: "And the State of Tennessee shall, moreover, in issuing grants and perfecting titles, locate six hundred and forty acres to every six miles square in the territory hereby ceded, where existing claims will allow the same; which shall be appropriated for the use of schools for the instruction of children, forever." [Land Laws, page 114.]

In order properly to meet the inquiry propounded to the committee, and to determine upon the propriety of granting the prayer of the memorial, it

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is necessary to examine into the nature and extent of the grant contained in that part of the act of 1806 just recited. If the authority sought is already in the Legislature of Tennessee, or if the title to the school lands in question has passed out of the General Government, further action on this subject by Congress is altogether useless and nugatory. To determine this question, and to ascertain the nature and extent of the grant of school lands in Tennessee, it is necessary to refer, 1st, to an ordinance of Congress passed May, 1785, "for ascertaining the mode of disposing of lands in the Western Territory;"—[1st vol. Laws U. S. p. 475; ]—for it will appear, on examination, that the provisions of the act of 1836, relating to this subject, are founded upon that ordinance; and, 2d, to the several acts of Congress passed subsequently to said ordinance, relating to school lands in the new States; and also to the construction which has been given to them by Congress and the States immediately interested therein. It was provided in the said ordinance, above referred to, that "there should be reserved the lot No. 16 of every township, for the maintenance of public schools *within the said township*,"—[Land Laws, 352.] This ordinance, it will be remembered, was to ascertain (or establish) the mode of disposing of lands in the Western Territory. Subsequently to the passage of this ordinance, by an act of Congress of the 2d of April, 1790, for the acceptance of a cession of the claims of the State of North Carolina to a certain district of the Western Territory, out of which the State of Tennessee was erected into a State in the year 1796, it was provided that the inhabitants of that territory so ceded should (shall) enjoy all the privileges, benefits, and advantages set forth in the ordinance of the late Congress for the government of the Western Territory of the United States, (referring to the ordinance of 1795,) with this only exception: "that no regulations made or to be made by Congress, should (shall) tend to emancipate slaves;"—[Laws U. S., vol. 2. pp. 87 and 88:] thus placing the inhabitants of the Territory or State of Tennessee on the same footing, with regard to the enjoyment of the privileges and advantages of school lands, with the inhabitants of the Northwestern Territory, out of which Ohio and some other of the northwestern States were afterwards formed. In conformity with this ordinance of 1785, by an act of Congress of April, 1802, for the admission of Ohio into the Union, it was provided "that the section No. 16 in every township, and where such section has been sold, granted, or disposed of, other lands equivalent thereto and most contiguous to the same, shall be granted to the inhabitants of such township, for the *use* of schools." [Land Laws, 474.] By this act, the provisions of the ordinance of 1785 were secured to the State of Ohio, almost in the words of the ordinance, intending, in the act, in conformity with the words of the ordinance, to restrict the grant to the inhabitants of the township in which or for which it had been set apart for the *use* of schools. The grant is not only restricted to the inhabitants of such particular township, but they were only authorized to hold the same for the *use* of schools. The same privilege and advantage which were thus secured to the State of Ohio in 1802, were still due to the State of Tennessee, by the terms of the act of cession above cited, of 1790, by which the inhabitants of that part of the Western Territory which now composes the State of Tennessee were to be secured in the enjoyment of "all the privileges, advantages, and benefits set forth in the said ordinance of 1785," (with one single exception, which has already been noticed.) This salutary provision was directed to be carried into effect

in Tennessee, (after its admission into the Union,) by the act of 1806 above cited, which resulted in setting apart for the *use* of schools the quantity of land in that State already mentioned. It appears, from these several acts and regulations, made by Congress with regard to the school lands in the Western Territory, that the school lands in Tennessee were granted on precisely the same terms, and subject to the same conditions and limitations, that the school lands in the State of Ohio were, and also in the several new States formed out of the Western Territory. From all which the committee conclude, 1st, that the title in fee simple did not pass *from* the General Government to the State of Tennessee, by the act of 1806, to the school lands granted under its provisions to that State, but that it was limited expressly to the *use* of schools; and that the State of Tennessee could only apply the use (that is, the profits and income of said lands, and the privileges of occupying and enjoying said lands) to the benefit of schools, and could not sell and convey said lands in fee simple, or convert them from the *use* intended in the original grant; and, 2d, that the use of each township of school lands was intended for the special benefit of the section or school district in which or for which it was originally located and set apart; and that the inhabitants of such section or district have a vested right in the use of the township of school land attached to such section or district, from which it cannot be converted, at least without the consent of all the parties interested in the appropriation and *use* of the same.

These positions, the committee believe, are fully sustained by a proper construction of the foregoing authorities, as likewise by the opinion of some of the State courts, and the action of Congress heretofore on this subject. Congress having already authorized the States of Ohio and Alabama to sell the school lands within their respective limits, on the several applications of those States, in form similar to that now made by the State of Tennessee, the committee believe this policy now to be well settled by precedent; and that it is necessary, to enable the Legislature of Tennessee to sell and convey said lands, to derive the authority from Congress: and they believe, from the circumstances of the case, the nature of the application, and the condition of the school land in Tennessee, that it is expedient to grant the authority asked for, so as to vest the power in the said Legislature of Tennessee (under proper limitations and guards) to sell and convey said lands in fee simple, and to vest and apply the proceeds of the sale thereof, as prescribed in the bill with which they accompany this report.

The Territory of Florida, it is well known, has been, for several years, the theatre of a war with savages, who make secret murder and midnight assassination with all other means of destruction. Many parts of that Territory have been made desolate, which, prior to the war, had but in segment rapidly its wealth and population. Numerous families have been thrown upon the world for support and education, who, but for the disasters which befell them in that war, would have had parents and friends to direct, and ample means to accomplish their education. The gallant militia of the neighboring States, who, from time to time, have been called into that service, have also felt, to some extent, the influence of the same calamity.

From the foregoing considerations, it will appear that the object of the proposed grant enlists feelings, and is seconded by interests pervading portions of the Union too numerous and too widely extended to be subject to blind & reckless prayers.

in Tennessee (after its admission into the Union) by the act of 1806 above cited, which resulted in setting apart for the use of schools the quantity of land in that State already mentioned. It appears from these several acts and regulations made by Congress with regard to the school lands in the Western Territory that the school lands in Tennessee were granted on precisely the same terms and subject to the same conditions and limitations that the school lands in the State of Ohio were and also in the several new States granted under the Western Territory. It is not possible to the committee to conclude, that the title in the lands in Tennessee by the act of 1806, to the school lands granted under its provisions to that State, but that it was limited expressly to the use of schools; and that the State of Tennessee could only apply the proceeds (that is, the profits and income of said lands) to the privilege of occupying and enjoying said lands to the benefit of schools; and could not sell and convey said lands in fee simple or convert them from the use of school lands to the original grant; and that the use of each township of school lands was intended for the special benefit of the section or school district in which or for which it was originally located, and not apart; and that the inhabitants of each section or district have a vested right in the use of the township of school land attached to such section or district from which it cannot be converted, at least without the consent of all the parties interested in the appropriation and use of the same. The committee believe the committee believe are fully sustained by a proper construction of the foregoing authorities as likewise by the opinion of some of the State courts and the action of Congress having already authorized the State of Ohio and Alabama to sell the school lands within their respective limits on the several applications of those States in form similar to that now made by the State of Tennessee. The committee believe this policy now to be well settled by precedent and that it is necessary to enable the Legislature of Tennessee to sell and convey said lands to devote the proceeds to the use of schools; and that they believe from the circumstances of the case, the nature of the application and the condition of the school land in Tennessee that it is expedient to grant the authority asked for so as to vest the power in the said Legislature of Tennessee (under proper limitations and guards) to sell and convey said lands in fee simple and to vest and apply the proceeds of the sale thereof as prescribed in the bill which they accompany this report.